THE HON'BLE SRI JUSTICE ASHUTOSH MOHUNTA
THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT APPEAL No.237 of 2013

Date:17.07.2013

Between:

Krishan Singh,
Deputy Commandant/Fire Central
Industrial Security Force, Hyderabad.

..... Petitioners

AND

Union of India,
Represented by its Secretary,
Ministry of Home Affairs,
New Delhi and others.

.....Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE ASHUTOSH MOHUNTA
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JUDGMENT: (Per Hon'ble Sri Justice A. Rajasheker Reddy)

This writ appeal is filed against the order 07-11-2012 passed by the learned Single Judge in W.P.No.24811 of 2000, wherein the learned Single Judge dismissed the writ petition regarding the claim made by the appellant for retrospective promotion.

2. The brief facts for disposal of this writ appeal are:-

Appellant/writ petitioner was originally appointed as a Sub-Inspector/Executive Branch on 01-09-1976 and he was promoted as an Inspector/Executive Branch on 21-10-1984. His services were utilized in the fire services. The fire services cadre was created in the Central Industrial Security Force only in the year 1990. The posts of Assistant Commandant/Fire were notified on 25-01-1990. As per the notification, the post have to be filed up as (1) 60% by promotion, failing which by transfer on deputation;
(2) 30% by transfer on deputation, failing which by direct recruitment; and (3) 10% by absorption of officers from public sector undertakings, failing which by transfer on deputation. The appellant responded to the notification seeking appointment as an Assistant Commandant/Fire. He was promoted as an Assistant Commandant/Fire on 12-08-1994 and joined as such on 16-09-1994, though he was empanelled for the vacancy of the panel year 1991.

The appellant claims that he ought to have been considered for the post by transfer on deputation, but the authorities resorted to direct recruitment. Five candidates were appointed as Assistant Commandant/Fire by direct recruitment in 1993. The appellant was thereafter promoted as an Assistant Commandant/Fire on 16-09-1994. The case of the appellant is that he was fully eligible to be promoted on 29-05-1990 as such he was entitled to be promoted to the rank of Assistant Commandant/Fire with all consequential benefits. As the delay in this promotion had an impact on his further promotion as a Deputy Commandant/Fire. He also sought retrospective promotion to the said post. He filed the writ petition praying for setting aside the proceedings dated
07-07-2000 rejecting his representation in this regard and sought a

consequential direction to revise his seniority in the post of Assistant Commandant/Fire with effect from
29-05-1990 and in the post of Deputy Commandant/Fire with effect from 29-05-1996.

3. The respondent-CISF Department filed counter stating that the feeder cadre of Inspector/Fire for promotion to the rank of Assistant Commandant/Fire was formed only in October/November, 1991 on receipt of options from personnel willing to be absorbed in the Fire Services Cadre. Seniority of Inspectors/Fire was circulated in November, 1991, but a proposal had been mooted for promotion from this cadre to the rank of Assistant Commandant/Fire in August, 1991 itself and was cleared by the Ministry of Home Affairs (MHA) in August, 1992. It was sent to the Union Public Service Commission (UPSC) in September, 1992 for convening the Departmental Promotion Committee (DPC). However, on certain observations of the UPSC, the case was again taken up with the MHA for relaxation of service eligibility of the officers. This issue was finalized only in December, 1993 and therefore, the DPC meeting was held only in June, 1994 for the vacancies relatable to the panel years 1991, 1993 and 1994. In this DPC, the appellant was empanelled against the vacancy of 1991 and was appointed as an Assistant Commandant/Fire. He assumed charge as such on
16-09-1994. It is also stated for promotion to the post of Deputy Commandant/Fire with six years of regular service in the grade is eligible, but as no suitable Assistant Commandant/Fire was available as on 01-01-2000.
Relaxation was granted by the MHA, the appellant and others were promoted, with relaxation, as Deputy Commandant/Fire. As per the existing rules, for promotion to the post of Commandant/Fire, officers with 14 years regular Gazetted service, with at least two

years regular service as Deputy/Commandant/Fire, were eligible for consideration. As the petitioner did not possess this qualifying service, he was not eligible for promotion to the rank of Commandant/Fire. He also stated that the appellant was absorbed in the post of Inspector/Fire, CISF, with effect from 14-10-1991 and was promoted as Deputy Commandant/Fire on 09-05-2000. He further stated that as per the recruitment rules, appointment to the post of Assistant Commandant/Fire was from the enumerated three categories in the ratio of 60:30:10. But, as the feeder grade of Inspector/Fire for promotion under the 60% quota was formed only in October/November, 1991, promotions could not be effected. However, owing to the poor response to the deputation drive, a proposal was forwarded to the UPSC on 27-03-1991 for filling up the vacancies by direct recruitment. The UPSC, in turn, recommended seven candidates under its letter dated 15-01-1993 out of whom, five candidates, including the seventh respondent, joined as Assistant Commandant/Fire in October, 1993. As these directly recruited Assistant Commandant/Fire assumed office first, they were placed above the promotees in the seniority list of Assistant Commandant/Fire in accordance with the Government's instructions dated 24-06-1978 and
03-07-1986. It is also stated that the deputation was not a matter of right and that it was for the parent organization and the borrowing department to accept the same. It is also pointed out that the authorities were not obligated under the rules to consider Inspectors/Executive for deputation as Assistant Commandant/Fire.

4. In the additional counter affidavit, it was also stated that the

direct recruits entered the service in the year 1993. The Commandant, however, stated that though the appellant was entitled to seniority from the year 1991 vis-à-vis his *inter se* seniority with direct recruits, his eligible service for promotion to the next higher rank would be counted only from his regular promotion as an Assistant Commandant/Fire on 16-09-1994. He would further complete six years service as an Assistant Commandant/Fire only on 15-09-2000 and was ineligible for promotion as a Deputy Commandant/Fire for the panel year 2000-01, as eligibility for promotion is determined on the first day of January of each year. After MHA accorded relaxation, the appellant was promoted as a Deputy Commandant/Fire on 09-05-2000 against the panel year 2000-01. As per the recruitment rules notified on 04-12-2002, promotion to the post of Commandant/Fire required 11 years of Gazetted service, including two years regular service as a Deputy Commandant/Fire. The appellant completed two years regular service as a Deputy Commandant/Fire on 08-05-2002, but he completed 11 years of Gazetted service only on 15-09-2005. He was therefore eligible for promotion as a Commandant/Fire only on 01-01-2006 for the panel year 2006-07. Hence his claim for retrospective promotion as Commandant/Fire with effect from 29-05-2000 is not tenable.

5. In the counter filed in another writ petition filed before the Delhi High Court, the same stand is taken in respect of candidate for the panel for 1991 stating that the seniority will be counted from the date of actual promotion. It is also stated that as per Guideline No.17.10 of the Guidelines on DPCs' communicated under Office Memorandum dated 10-04-1989 by the Ministry of Personnel, Public Grievances and Pension, the DoPT and the Government of India, deals with the date from which promotions are to be treated as regular and states that the general principle would be that

promotion of officers included in the panel would be regular either from the date of validity of the panel or the date of their actual promotion, whichever is later.

6. The learned Single Judge, after elaborate discussion, following judgments of the Supreme Court held that the appellant is entitled for seniority from the date of actual promotion i.e., from the year 1994 and he could not claim retrospective promotion and accordingly dismissed the writ petition.

7. The learned counsel for the appellant states that since the appellant is empanelled for the year 1991, his promotion has to be considered from the date of appointment and not from the date of actual promotion. It is his case that there is no fault on the part of the appellant for the delay in promotion. It is only authorities who have delayed the promotion. As a result, he has lost his seniority. Had he been promoted from the actual panel year in which he was empanelled he could have been promoted and he could have been senior to 7th respondent in the writ appeal since the 7th respondent is appointed by direct recruitment by 1993.

8. On the other hand, the learned counsel for the 7th respondent submits that the appellant was only promoted in the year 1994 whereas the 7th respondent was appointed in the year 1993, as such, the appellant cannot claim retrospective promotion. The guidelines issued by the Department as well as the Judgments of the Supreme Court held that the seniority should be from the date of the actual promotion but not with retrospective effect.

9. In view of the rival contentions, it is to be seen that in the present case, the appellant was promoted as an Assistant

Commandant/Fire on 12-08-1994 and as per 17.10 of the guidelines, the DPC communicated under Office Memorandum dated 10-04-1989 by the Ministry of Personnel, Public Grievances and Pension, the DoPT and the Government of India deals with the date from which promotions are to be treated as regular and states that the general principle would be that promotion of officers included in the panel would be regular either from the date of validity of the panel or the date of their actual promotion, whichever is later.

10. In ***VINODANAND YADAV v. STATE OF BIHAR***[1], the Supreme Court while dealing with a situation where promotions had been granted to the respondents from a date prior to their being actually borne on the cadre. The direct recruits therefore challenged the gradation list wherein the respondents were shown as seniors basing on their retrospective promotion. Relying on its earlier judgment in ***STATE OF BIHAR v. AKHOURI SACHINDRA NATH***[2], the Supreme Court held that promotees, not borne on the cadre at the time when the direct recruits came to be appointed, could not be given seniority in service over such direct recruits.

11. In ***STATE OF UTTARANCHAL v. DINESH KUMAR SHARMA***[3], the Supreme Court observed that a promotee shall get seniority of the year in which his/her appointment is made and not of any earlier year. Therefore, the respondent in that case was held disentitled to claim seniority from the date of occurrence of the vacancy in 1995-96 but he is entitled for seniority only from 1999 when he was substantively promoted.

12. In ***UTTARANCHAL FOREST RANGERS' ASSOCIATION (DIRECT RECRUIT) v. STATE OF U.P.***[4], wherein it was held that seniority had to be decided on the basis of the rules in force on the date of appointment and no retrospective promotion or seniority could be granted from a date when an employee was not even borne on the cadre. The similar view taken by the Supreme Court in ***K.C.JOSHI v. UNION OF INDIA***[5]***.*** The similar view was taken in ***JAGDISH CH.PATNAIK v.STATE OF ORISSA***[6]***.***

13. In ***A.N.SEHGAL v. RAJE RAM SHEORAM***[7]***[7]***, the Supreme Court was dealing with a situation where, as long as a direct recruit Assistant Executive Engineer eligible to be considered for promotion was not available, a promotee from Class II service in excess of the quota was eligible to occupy, in officiating capacity, the senior post of Executive Engineer and above. However, the moment direct recruits were available, they alone were entitled to occupy 50% of their quota posts and the promotees had to give way to the direct recruits.

14. In the present case, though vacancies were available in the year 1991 itself, no Inspector/Fire in the CISF was eligible for promotion as an Assistant Commandant/Fire owing to the recruitment rules as they stood at that point of time. Though the appellant and two others, who were ultimately promoted against the panel year 1991, possessed the educational qualifications, they did not fulfill the eligibility condition as they had not put in five years of service in the grade. It was only in the year 1993 the recruitment rules were amended, whereby seven years of service in the grade, including service as an Inspector/Executive, was taken to be the qualifying service. Thereupon, the appellant and

the two others became eligible for promotion. By virtue of these amended rules, the case of the appellant and others were considered in the DPC meeting held in June, 1994 and they were promoted as Assistant Commandants/Fire in August, 1994. By that time, the seventh respondent and four others were already appointed to the posts through direct recruitment in the year 1993. As such the appellant cannot claim retrospective promotion and seeks seniority for treating him as senior to the 7th respondent.

15. In ***DINESH KUMAR SHARMA's*** case (Supra-3), the Supreme Court held that the appellant and others have no right to assert retrospective seniority by claiming promotion from an anterior date in the context of the panel year in which the vacancy arose.

16. The guidelines in the present case also speak against retrospective promotion. In the present case, the appellant was not even eligible for retrospective promotion in the year 1990.

17. The learned Single Judge also relied upon the above judgments and after thorough discussion came to the conclusion that the appellant is not entitled for retrospective promotion to the post of Deputy Commandant/Fire and Commandant/Fire. The view taken by the learned Single Judge is based on principles laid down by the Apex Court in several judgments referred to supra. Therefore, we do not find any infirmity in the order passed by the learned Single Judge as the same is well considered order.

18. In view of the facts and circumstances, we confirm the order passed by the learned Single Judge and accordingly, the writ appeal is dismissed. Miscellaneous petitions pending, if any, in this appeal, shall stand dismissed. No costs.

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JUSTICE ASHUTOSH MOHUNTA

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JUSTICE A. RAJASHEKER REDDY

Date:17-07-2013

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[1] 1994 Supp. (2) SCC 44

[2] 1991 Supp. (1) SCC 334

[3] (2007) 1 SCC 683

[4] 2006 (9) SCALE 577 = (2006) 10 SCC 346

[5] 1992 Supp. (1) SCC 272

[6] (1998) 4 SCC 456

[7] (1992) Supp (1) SCC 304 = AIR 1991 SC 1406